
Wisconsin Legislative Council

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Director



TO: REPRESENTATIVE MICHAEL SCHRAA

FROM: Legislative Council Staff

RE: Major Provisions of Act 10, Implications of Reversing Certain Act 10 Provisions for DOC Employees, and the Ability of DOC Employees to Form or Join Unions

DATE: April 1, 2022

You asked several questions relating to 2011 Wisconsin Act 10, benefits for Department of Corrections (DOC) employees, and the ability of DOC staff to unionize. Specifically, you asked for: (1) a summary of the policy background and contents of 2011 Wisconsin Act 10; (2) a discussion about the implications of the state fully covering health care and retirement benefits for DOC employees, but not covering such benefits in the same amounts for other state employees; and (3) a response to whether DOC employees are permitted to join or form a union.

BRIEF POLICY BACKGROUND AND SUMMARY OF ACT 10

2011 Wisconsin Act 10, as amended by 2011 Wisconsin Act 32, (Act 10) was a budget adjustment act that made significant changes to public employee collective bargaining rights, compensation, and fringe benefits, in addition to changes to the State Civil Service System and Medical Assistance (MA) program. The fiscal estimate for the underlying legislation that became Act 10, created by Governor Walker's Department of Administration (DOA), stated that the bill adjusted fiscal year 2010-11 appropriations to "address immediate shortfalls."¹

Enactment of Act 10 was the policy option chosen by the Legislature to address prior projections of budget shortfalls by increasing the employee share of costs for retirement and health insurance benefits, along with limiting the subjects available for collective bargaining and other revisions to state law. The Legislative Fiscal Bureau (LFB) concluded that the effect of Act 10 on the 2010-11 General Fund balance was an increase of \$37.5 million, of which \$27.9 million resulted from increased departmental revenues from increased public employee health and retirement contributions and \$1.9 million from lapses or transfers from increased employee health and retirement contributions.²

Prior to Act 10, state law provided a uniform framework for collective bargaining for state and local public employees and authorized collective bargaining units to negotiate a wide range of working conditions and economic issues (commonly referred to as wages, hours, and other working conditions). The act revised that framework, creating two distinct public employee classifications with significantly

¹ DOA [Fiscal Estimate](#) for 2011 Assembly Bill 11, dated February 15, 2011.

² Legislative Fiscal Bureau, [Comparative Summary of Budget Recommendations Volume II: 2011 Act 32 \(Including Budget Adjustment Acts 10, 13, and 27\)](#), at page 397. You may wish to consult with the LFB regarding more recent estimates of the fiscal effect of the act.

different collective bargaining rights: (1) “public safety employees”; and (2) “general employees.” At the local level, “public safety employees” are municipal employees in positions classified as protective occupation participants under the Wisconsin Retirement System (WRS), or in a comparable county or city retirement system, and who are police officers, fire fighters, deputy sheriffs, county traffic police officers, or individuals employed by a village to perform police and fire protection duties. At the state level, a “public safety employee” is a member of the state traffic patrol or a state motor vehicle inspector.

Act 10 eliminated collective bargaining for general employees with respect to hours and conditions of employment and for base wage increases above any Consumer Price Index (CPI) increase, but continued to allow such collective bargaining for public safety employees. Act 10 also eliminated the ability for general employees to collectively bargain over retirement contributions and health insurance premium costs for represented employees, and imposed new contribution requirements for retirement benefits and, for certain employees, health insurance premiums.

Act 10 caused most public employees to pay a larger portion of WRS retirement contributions. This is because, prior to Act 10, state and municipal governments (“WRS employers”) paid all or most of both the employer *and* employee share of contributions, as negotiated and included within collective bargaining agreements. Act 10 eliminated the ability of WRS employers to pay any portion of the employee retirement contributions for general employees, but retained the ability for public safety employees hired before July 1, 2011, to engage in collective bargaining on the employee share of retirement contributions.

After enactment of Act 10, most public employees participating in a state health insurance plan offered by the state’s Group Insurance Board (GIB) also paid a larger portion of health insurance premium costs. The act prohibited employers from paying more than 88 percent of the average premium costs of health plans offered in the plan tier with the lowest employee premium costs, except as otherwise provided in a collective bargaining agreement with public safety employees.

IMPLICATIONS OF STATE COVERING EMPLOYEE PORTIONS OF RETIREMENT AND HEALTH INSURANCE BENEFITS FOR DOC EMPLOYEES

Act 10 made a number of modifications to employee and employer retirement contributions to the WRS, including modifications to employee and employer retirement contributions and a reduction in the retirement formula multiplier for certain employees and officials, as well as changes to health insurance premiums for state and municipal employees. DOC employees were included in those changes in the category of general employees.

Act 10 Modifications to Employee and Employer Retirement Contributions

Prior to Act 10, although statutes required an employer to pay the full employer contribution, it also provided that an employer may pay all or part of the employee-required WRS contributions. This was generally provided through collective bargaining or the compensation plan. An individual employee’s contribution rate depended on the employee’s particular employment classification and the percentage of the employer payment for the employee share.

As discussed above, Act 10 generally prohibited the employer from paying the employee share of the WRS contribution. Instead, the act required that the contribution rate for general employees, elected officials, and executive employees equal one-half of all actuarially required contributions, as approved by the Department of Employee Trust Funds (ETF) Board. Act 10 prohibited employer payment of the

employee share for public safety employees hired after July 1, 2011, and specified that the contribution rate for protective occupation employees is equal to the percentage of earnings contribution rate for general employees.

Act 10 Changes to Health Insurance Premiums for State Employees

Prior to Act 10, the employer was generally required to pay not less than 80 percent of the average premium cost of plans offered in the tier with the lowest employee premium cost, except as provided in a collective bargaining agreement or if a different amount was recommended by the Office of State Employment Relations (OSER) Director and approved by the Joint Committee on Employment Relations (JCOER). The specific percentage varied, and was specified through collective bargaining or the compensation plan.

Act 10 limited the amount an employer may generally pay to 88 percent of the average premium cost of plans offered in the tier with the lowest employee premium cost, except as otherwise provided in a collective bargaining agreement with public safety employees. The OSER Director must annually establish the amount that the employer is required to pay.

Implications of Restoring Retirement and Health Insurance Premium Benefits to Pre-Act 10 Levels for DOC Staff

There do not appear to be any significant legal obstacles to restoring retirement or health insurance premium benefit provisions for DOC employees as they existed prior to Act 10. However, there are fiscal and practical implications of doing so. For instance, there would be a significant cost of providing additional benefits that would need to be covered by an adequate appropriation. Also, as retirement contribution and health premium rates varied prior to Act 10 depending on employee classifications, collective bargaining, and the compensation plan, administrative decisions would be needed to determine specific rates and whether to reinstate all former variables. Additionally, the restoration of benefits for employees of one state agency would likely trigger similar requests from other state agencies on behalf of their employees.

ABILITY OF DOC EMPLOYEES TO UNIONIZE

State law permits DOC employees to join or form unions, but the feasibility of creating and maintaining a union and the benefit of doing so were impacted by Act 10 and federal case law. First, Act 10 made the process of forming and maintaining a union for general employees more challenging. Following Act 10, a bargaining unit must hold a recertification vote every year (rather than continuing until decertified), and the bargaining unit representative must receive a 51 percent majority vote of all employees (rather than a majority of those actually voting).

Second, court decisions and Act 10 impacted the revenue available to unions to conduct bargaining and other union activities. In 2018, the U.S. Supreme Court issued a decision holding that mandatory collection of public sector union dues is a violation of the First Amendment.³ Even prior to the decision, Act 10 eliminated the ability of public employers to apply a payroll deduction to general employees for union dues under a fair share agreement or maintenance-of-membership agreement. The elimination of automatic dues collection from members resulted in a loss of revenue for unions, which some groups have argued impacts the value and assistance a union is able to provide to members.

³ *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018).

Finally, Act 10 impacted the benefit employees experience from joining a union because of the limited subjects on which a general employee union may collectively bargain. As noted above, for general employees, including DOC employees, Act 10 limits collective bargaining on wages to the increase in CPI, and prohibits collective bargaining on any other terms or conditions of employment.

Please let us know if we can provide any further assistance.

ALL:jal